IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3446 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI NANABHAI MALI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3446 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu, has challenged the detention order passed against him by the detaining authority, by its order dated 17.2.2004

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in country liquor and keeping instruments for preparing country liquor. The detaining authority, after considering the aforesaid cases, and after considering the statements of some witnesses, whose names have not been disclosed to the petitioner, has detained him under PASA. The petitioner has challenged the aforesaid order by way of this petition.

3. Learned Advocate for the petitioner submitted that the petitioner made a representation against such detention to the detaining authority on 9.3.2004, which was received by the detaining authority on 11.3.2004. However, the said representation was kept pending and the same was forwarded on 18.3.2004 to the State Government and there is a delay even in despatching the representation of the petitioner. Though the point of delay is already taken in the petition, there is no reply filed by the authority for explaining such delay. It is, as such not, in dispute that the representation of the petitioner remained unattended for one week before the authority, and therefore, on this ground, the petition is required to be allowed.

4. In this connection, the learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was

approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

5. In view of the fact that even the detaining authority has not despatched the representation to the State Government in time, and the detaining authority has not filed any reply explaining the reasons for such delay and, therefore, on the ground of delay in despatching the representation to the State Government, this petition is required to be allowed.

6. In view of what is stated above, this petition is allowed. The order of detention dated 17.2.2004 is quashed and set aside. The detenu, Kanubhai Nanabhai Mali, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

7. At this stage, the learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Sevasi Village, Dist.Vadodara, upto 31st October, 2004, unless he is required to appear in any other case for attending the court. Learned advocate for the petitioner has further submitted that she is making the aforesaid statement after taking instructions from the detenu. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities.

(P.B. Majmudar, J.)

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